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SUITE 112
WASHINGTON, DC 20510-0505
(202) 224-3553
senator@boxer.senate.gov
http://www.senate.gov/~boxer

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SENATOR BARBARA BOXER
Washington, DC

Date: 11/26/97
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From: Frances Nam

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Notes:

1700 MONTGOMERY STREET
SUITE 240
SAN FRANCISCO, CA 94111
(415) 393-0100

2750 EAST IMPERIAL HIGHWAY
SUITE 846
EL SEGUNDO, CA 90248
(310) 414-8700

650 CAPITOL MALL
SUITE 884A
SACRAMENTO, CA 95814
(916) 448-2707

3300 TULARE STREET
SUITE 130
FRESNO, CA 93721
(209) 497-5105

525 B STREET
SUITE 090
SAN DIEGO, CA 92101
(619) 238-3064

210 NORTH E STREET
SUITE 210
SAN BERNARDINO, CA 92401
(909) 388-8575

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BARBARA BOXER
CALIFORNIA

United States Senate

HART SENATE OFFICE BUILDING
SUITE 112
WASHINGTON, DC 20510-0505
(202) 224-3553
senator@boxer.senate.gov
<http://www.senate.gov/~boxer>

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 26, 1997

The Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW Suite 814
Washington, D.C. 20554

Dear Mr. Chairman:

I was very disturbed to read the attached article from the Los Angeles Times concerning a carjacking incident in California. The victim almost lost her life because she was unable to reach the 911 dispatcher on her mobile phone. Since her service's signal was too weak to carry a 911 call in the area in which she was attacked, and no other carrier was required to pick up her 911 calls, her attempts to reach the police were blocked.

One public survey showed that two-thirds of cellular phone subscribers cited personal safety as their primary motivation for signing up for the service. However, most cellular users do not know that their emergency calls are not required to be picked up and passed through to the police or fire department.

I understand that some carriers do not want to pass calls from subscribers of competing carriers, and others want to charge for all calls made on a wireless phone, including access to 911 dispatchers. However, public health and safety must come first. All 911 calls should be passed to the appropriate public safety or law enforcement agency, on the strongest available signal in the area, without regard to whether the caller is a subscriber of that carrier's service.

I urge the Commission to lift its stay and implement its new 911 rules as soon as possible. These rules should ensure that all cellular 911 calls will be automatically transmitted to law enforcement on the strongest compatible radio signal available at the time the call is made. Public safety and security are at stake, so I urge you to act without delay.

Sincerely,


Barbara Boxer
United States Senator

1700 MONTGOMERY STREET
SUITE 240
SAN FRANCISCO, CA 94111
(415) 463-0100

2280 EAST IMPERIAL HIGHWAY
SUITE 646
EL SEGUNDO, CA 90245
(310) 414-6700

650 CAPITOL MALL
SUITE 6544
SACRAMENTO, CA 95814
(916) 448-2787

2305 TULARE STREET
SUITE 130
FRESNO, CA 93721
(209) 437-6103

525 B STREET
SUITE 990
SAN DIEGO, CA 92101
(619) 239-2884

210 NORTH E STREET
SUITE 210
SAN BERNARDINO, CA 92401
(702) 682-8575

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HEADLINE: CELL PHONES, 'CRIME FIGHTERS OF THE '90S,' ARE STRIKING OUT;
SAFETY: WOMAN SHOT DURING CARJACKING SUES SERVICE PROVIDER
BECAUSE 911 CALLS
WOULD NOT GO THROUGH.

BYLINE: MICHAEL A. HILTZIK, TIMES STAFF WRITER

BODY:

There could hardly have been a worse time for Marcia Spielholz's cellular phone to fail her.

It was a Sunday night in December, and the 37-year-old lawyer was on her way home to Beverly Hills from a Christmas shopping trip to Culver City. Along the way, it was clear, her BMW had attracted the attention of a pair of carjackers.

For 10 terrifying minutes she played cat-and-mouse with a black sedan along National Boulevard and up Castle Heights Avenue, one hand on the wheel, the other frantically tapping 911 onto the keypad of her cellular phone.

The call would not go through; she would dial again. Again, the rapid busy signal that meant no connection. Another try, another sickening busy.

Finally her time ran out. The black sedan cut off her escape on Castle Heights. A man approached her car with a gun drawn. Spielholz held the useless phone to her face as if to suggest that she had reached police, hoping she might scare off an attack.

The man didn't seem to be fooled. He thrust a .38 up to the window. "I said, 'Please don't do this,' and turned my head away," she recalled in an interview with The Times.

The bullet blew off a part of her right lower face and came to rest just above the carotid artery delivering blood to her brain. The blast drove the phone into her face, shattering her jaw--and more.

She recently underwent her 11th reconstructive operation, raising her medical bills to more than \$ 250,000. The time she has needed to devote to recuperation and physical therapy after the 1994 shooting forced her long ago to give up her job as a lawyer for MGM Studios. The assailants, who fled after the gunshot, have never been caught.

Spielholz today is haunted by the thought of what might have been, had her cellular phone accomplished what she had always regarded as one of its fundamental purposes: to summon help.

"The police told me later they were blocks away," she said. "They could have been there in minutes. The 911 dispatcher could have told me what they tell all carjacking victims--to abandon the car. But I never got that far."

Consumer advocates and cellular industry critics say Spielholz's ordeal, although exceptionally tragic, is not entirely the product of bad luck. Among the contributing factors, they argue, are federal regulatory policies and industry practices that have systematically undermined the quality and accessibility of 911 service for cellular phone customers.

Users of conventional phones have long become accustomed to free 911 access as a public right. In most communities, the emergency number can be reached from a pay phone without dropping a coin, and in some communities the service is so efficient that emergency equipment can be dispatched before a caller completes the connection.

That is not true in the cellular world. Although public safety agencies across most of the country are equipped to receive 911 calls from cellular phones, no state or local regulators oversee the quality or availability of 911 service to cellular users. (In this state, all cellular calls are fielded first by the California Highway Patrol, which passes them on if necessary to local police or fire agencies.) The cellular industry has also fought and delayed federal rules aimed at broadening access to 911 for all cellular customers. These include a proposal that would ensure that all cellular 911 calls be automatically transmitted on the strongest compatible radio signal available at the moment the call is made.

Spielholz says that this regulation might have saved her if it were in effect at the time of her assault. One technical study she commissioned for a lawsuit that she filed against L.A. Cellular, her service provider, indicates that the company's signal is still too weak to carry a 911 call in the area of National

and Castle Heights--unlike that of AirTouch Communications, the rival cellular carrier in Los Angeles. (Because signal strength tends to fluctuate, L.A. Cellular's signal might be stronger than AirTouch's at other points or at other times of day.)

In other words, under the so-called strongest compatible signal standard, Spielholz's 911 call would have automatically shifted to AirTouch's line and her chances of summoning help would almost certainly have improved.

But that is only part of the problem with cellular 911, critics say. The cellular industry has never shown the same commitment to easy access for all callers demonstrated by conventional--or land-line--phone companies, which are regulated by state authorities and routinely provide free 911 access from private and pay phones alike.

Instead, many wireless companies favor their own customers by deliberately blocking 911 calls made on their own signals by callers using competitors' phones, by out-of-towners, or by users of phones that have never been activated by a commercial service (so-called non-initialized phones).

"I believe access to 911, no matter how you get there, is an obligation and a public service," said James Conran, a former member of the California Public Utilities Commission whose San Francisco consumer group, Consumers First, has pressed for broader cellular 911 service. "The industry is doing everything it can behind the scenes to kill" FCC rules aimed at widening cellular 911 access, he said.

That's an important issue, because a large number of the 55 million cellular phones in operation nationwide are used by their owners primarily as emergency devices.

Industry studies show that as many as 20% of all users pay low monthly fees for service--\$ 9.95 to \$ 19.95 in most cases--but never record even a single minute of elective use. Industry experts believe that such a pattern is characteristic of customers purchasing the service simply for the privilege of reaching help in a tight spot.

Cellular companies have long treasured this so-called safety and security market as a wellspring of low-cost subscribers.

Spielholz argues in court papers that L.A. Cellular promoted the security function of its service in advertising and customer mailings--proclaiming that cellular phones are "becoming the crime fighters of the '90s." The company also said that two-thirds of cellular subscribers surveyed nationwide cited personal safety as their primary motivation for signing up--without stressing the

downside that cellular service can be spotty and unreliable.

That was especially true on the Westside, according to a deposition given in her Los Angeles federal court lawsuit by former L.A. Cellular President Michael Heil, who said that during his tenure the company chronically struggled to keep up with capacity demands in the "core," the West Los Angeles-Beverly Hills-Culver City area.

Those problems, he said, were manifested in a large number of dropped, or uncompleted, calls and complaints from customers unable to make connections.

L.A. Cellular (a partnership of AT&T Wireless and BellSouth) contends that customers are explicitly cautioned on their service invoice that cellular service can be affected by many factors, including terrain, foliage and weather.

The company also said in its response to Spielholz's lawsuit and a related class-action complaint that its customer contracts specifically disclaim any

responsibility for a subscriber's incidental losses or damages stemming from service problems.

The company further says that it does not market phones explicitly as safety devices.

"We market the convenience" of cellular service, said Steven C. Crosby, the company's vice president for external affairs. "We do not emphasize or exploit the 'fear factor' in marketing or advertising."

Representatives for the cellular industry say that they support, in principle, efforts to broaden 911 access for cellular users, but that many proposals involve troublesome technical obstacles.

Industry representatives argue, for example, that with the advent of digital cellular phones, a number of incompatible systems will be in use for wireless communications, hampering efforts to standardize access. Ensuring that law enforcement agencies' own systems are compatible with those of wireless service companies will also take time, they say.

But consumer advocates say those technical problems are exaggerated. They say what the industry really fears is that more customers might discover that most cellular phones are capable of placing 911 calls regardless of whether a user has signed up for service—but only if the local cellular companies are willing to transmit the call.

"That's the biggest scam of the cellular companies," said Mark Hiepler,

Spielholz's attorney. "You don't have to sign up to get through."

In California, all cellular carriers now pass all 911 calls to emergency agencies regardless of their source, but there is as yet no law or regulation requiring them to do so. The implementation date of an FCC regulation requiring such access was recently deferred from Oct. 1 to the end of this month, and industry critics fear further delays.

Industry spokesmen argue that encouraging widespread use of unconnected phones would lead to mischief and abuse.

"We don't want people making prank calls from phones they buy at swap meets," said J. A. Cellular's Crosby.

Law enforcement officials say that's not a significant problem, especially compared with the benefits of broader 911 access.

"The more cell phones on which you can make 911 calls, the better," said California Highway Patrol Commissioner Dwight Helmick.

Cellular representatives also contend that because free 911 service is financed in part by state taxes on subscribers, nonsubscribers should not get unrestricted access to 911.

"It's a fairness issue," said Steve Carlson, executive director of the Cellular Carriers Assn. of California. "People pay for cell service and part of what they pay for is 911 access. If all you need to do is buy the phone, then you wouldn't pay the fees and 911 taxes that finance 911 service."

As for the "strongest compatible signal" standard, "our position is this is a solution in search of a problem," said Michael F. Altschul, general counsel for the Cellular Telecommunications Industry Assn.

He noted that all cellular phones are manufactured with two radio bands built in, corresponding to the two carriers licensed by the FCC to operate in each metropolitan area.

"All cell phones allow the customer to roam on the other band if the preferred carrier doesn't have a serviceable signal," Altschul said. "The user could be educated to know how to flip to the other band."

But critics say that manually reprogramming a cellular phone is a laborious procedure that is almost impossible for the average consumer, especially in a crisis.

Critics argue that even making such a suggestion shows how well the industry understands that it has oversold the reliability of cellular phones as safety devices.

When Hiepler asked former L.A. Cellular President Heil in a deposition whether having a cellular phone handy in an emergency would give him "peace of mind"--a phrase drawn from a 1994 L.A. Cellular ad campaign--the executive replied:

"Yeah, if a criminal were chasing me and I were to be able to place a call . . . and if my phone were working, if the battery were in proper working order and if I had dialed correctly . . . and if . . . that call were then routed to the California Highway Patrol . . . and if those people were to be able to respond correctly. I'm sure there are a few ifs I left out. Then I might have some peace of mind."

GRAPHIC: PHOTO: Marcia Spielholz was shot in the face during a carjacking in 1994. PHOTOGRAPHER: ROBERT GAUTHIER / Los Angeles Times

LANGUAGE: English